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## Who's Still Missing: Arguments for the Inclusion of Undocumented Immigrants in Universal Healthcare

Alix Melton, University of Puget Sound

If a man were to walk into an emergency room gasping for breath and then fall to the ground, a physician will treat that patient regardless of insurance coverage, social status, or any other qualifier. The patient will be billed for this treatment later, but support is available in the form of emergency Medicaid to virtually anyone who is unable to pay. On the other hand, if a man walks into a clinic with edema of the lower extremities, a possible sign of liver disease, congestive heart failure, and a host of other serious and potentially lethal chronic diseases, the same rules do not currently apply.

The Patient Protection and Affordable Care Act (P.L. 111-148) and the Health Care and Education Reconciliation Act of 2010 (P.L. 111-152), collectively known as the Affordable Care Act and colloquially known as Obamacare, were signed into law in 2010 with the intent of expanding access and affordable healthcare to those who had previously been uninsured. The law contains provisions for expanding Medicare, Medicaid, and setting up state-run insurance exchanges that help the public purchase private insurance and provide cost assistance as needed. Anyone who resides in the U.S. legally is eligible for these plans, however undocumented immigrants were notably and purposefully barred from participation in state-run exchanges.

Recent statistics estimate that there are approximately 11 million undocumented immigrants in the United States.<sup>1</sup> Around 57% of these immigrants are from Mexico.<sup>2</sup> Of these immigrants, 59% are without health insurance (a figure 4 times that of legal residents). Those

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<sup>1</sup> Charlene Galarneau, "Still Missing: Undocumented Immigrants in Health Care Reform," *Journal of Health Care for the Poor and Underserved* 22, no. 2 (2011): 422–28, doi:10.1353/hpu.2011.0040.

<sup>2</sup> Arturo Vargas Bustamante et al., "Variations in Healthcare Access and Utilization Among Mexican Immigrants: The Role of Documentation Status," *Journal of Immigrant and Minority Health* 14, no. 1 (October 24, 2010): 146–55, doi:10.1007/s10903-010-9406-9.

with insurance are mostly covered by employer based insurance, while just 3% have private health insurance.<sup>3</sup> Undocumented immigrants, prior to the implementation of the Affordable Care Act, represented 1 in every 7 of the uninsured.<sup>4</sup> As the new health insurance mandate is implemented—a mandate that does not apply to those here illegally—the share of the uninsured occupied by undocumented immigrants is likely to increase dramatically.

There are many arguments that have been deployed to argue for the inclusion of immigrants in the Affordable Care Act. The first, the “effortful immigrant frame,” argues that immigrants generally come to the United States for work and often take up employment in hard labor jobs with unsafe working conditions—jobs that most U.S. citizens do not in fact want. Based on their contributions to society, proponents of this viewpoint offer, they ought to qualify for health benefits. A second, and similar, frame is the injustice frame, which offers that undocumented immigrants are a victimized group and should be offered services which relieve their suffering and thus work towards social justice. Other frames focus on public health as the ultimate goal, stating that immigrants ought to be provided with healthcare services because doing so ultimately provides a public benefit.<sup>5</sup> This is based on the idea that immigrants represent a hazard to the general population by introducing communicable diseases. Without screening, treatment, and immunizations, undocumented immigrants are thus a risk to American Citizens. As such, they ought to be provided with care that protects the rest of the country.

A human rights frame can also be implemented in calling for the inclusion of undocumented immigrants in the Affordable Care Act. The 1948 Universal Declaration of

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<sup>3</sup> Galarneau, “Still Missing.”

<sup>4</sup> Stephen Zuckerman, Timothy A. Waidmann, and Emily Lawton, “Undocumented Immigrants, Left Out Of Health Reform, Likely To Continue To Grow As Share Of The Uninsured,” *Health Affairs* 30, no. 10 (October 1, 2011): 1997–2004, doi:10.1377/hlthaff.2011.0604.

<sup>5</sup> Anahí Viladrich, “Beyond Welfare Reform: Reframing Undocumented Immigrants’ Entitlement to Health Care in the United States, a Critical Review,” *Social Science & Medicine*, Part Special Issue: Migration, “illegality”, and health: Mapping embodied vulnerability and debating health-related deservingness, 74, no. 6 (March 2012): 822–29, doi:10.1016/j.socscimed.2011.05.050.

Human Rights, the document that for the purposes of international action essentially defines human rights, states that:

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing, and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age, or other lack of livelihood in circumstances beyond his control.<sup>6</sup>

The UN Economic and Social Council reiterated this right in a comment published in 2000, which not only states that all have a right to health, but further requires that health care be accessible, including economic accessibility. This comment explicitly states

In particular, States are under the obligation to *respect* the right to health by, *inter alia*, refraining from denying or limiting equal access for all persons, including prisoners or detainees, minorities, asylum seekers and illegal immigrants, to preventive, curative, and palliative health services.<sup>7</sup>

While there are many arguments for inclusion, I argue here that the human rights approach is the strongest. According to human rights scholar Jack Donnelly, “Rights are *prima facie* trumps. All things considered, rights may themselves be trumped by weighty other considerations. Claiming a right, however, in effect stops the conversation and both increases and shifts the burden of proof to those who would argue that this right in this particular case is appropriately trumped.”<sup>8</sup> With regard to the particular exclusion undocumented immigrants from the Affordable Care Act, this means that the arguments for excluding this group must outweigh a

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<sup>6</sup> “Refworld | Universal Declaration of Human Rights,” *Refworld*, accessed April 5, 2015, <http://www.refworld.org/docid/3ae6b3712c.html>.

<sup>7</sup> “General Comment No. 14 (2000) The Right to the Highest Attainable Standard of Health” (United Nations Economic and Social Council, August 11, 2000), [http://www.nesri.org/sites/default/files/Right\\_to\\_health\\_Comment\\_14.pdf](http://www.nesri.org/sites/default/files/Right_to_health_Comment_14.pdf).

<sup>8</sup> Jack Donnelly, *Universal Human Rights in Theory and Practice* (Cornell University Press, 2013). 8.

claim to a universal human right. Visiting the main arguments for exclusion, this is clearly not the case.

The first main argument for restrictive measures is that providing health care and other essential social services to undocumented immigrants places an undue tax burden on those who are in the country legally. There is no conclusive evidence showing that this is the case. In fact, some studies have shown that foreigners likely contribute more to the economy in productivity and taxes than they receive in social service benefits.<sup>9</sup> Undocumented workers contribute approximately \$7 billion in social security tax revenues and \$1.5 billion in Medicare taxes annually.<sup>10</sup> To claim that this group is receiving benefits without contributing tax dollars is simply untrue. Additionally, healthcare for illegal immigrants is already something we pay for, but not in a cost efficient manner. Without access to primary care and preventative health services, undocumented immigrants tend to rely on safety net providers, including emergency care, which everyone ultimately pays for. When a person is seen in the emergency department for care that could have been provided in a primary care setting, costs have been shown to be 320%-728% higher. By allowing undocumented immigrants to buy into health insurance, we can cut these costs by giving them access to primary care.<sup>11</sup>

As James Dwyer notes in his critique of the traditional frames regarding immigrants and healthcare, there is a problem with the economic question itself. Dwyer employs the metaphor of a public library to explain his qualms with the economic contribution argument: in the library, some people pay for more than they use, and others use more than they pay for. But regardless of

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<sup>9</sup> Anahí Viladrich, "Beyond Welfare Reform: Reframing Undocumented Immigrants' Entitlement to Health Care in the United States, a Critical Review," *Social Science & Medicine*, Part Special Issue: Migration, "illegality", and health: Mapping embodied vulnerability and debating health-related deservingness, 74, no. 6 (March 2012): 822–29, doi:10.1016/j.socscimed.2011.05.050.

<sup>10</sup> Charlene Galarneau, "Still Missing: Undocumented Immigrants in Health Care Reform," *Journal of Health Care for the Poor and Underserved* 22, no. 2 (2011): 422–28, doi:10.1353/hpu.2011.0040.

<sup>11</sup> Andrew McWilliams et al., "Cost Analysis of the Use of Emergency Departments for Primary Care Services in Charlotte, North Carolina," *North Carolina Medical Journal* 72, no. 4 (August 2011): 265–71.

which applies to you, the library is still valuable in the purpose it serves: to promote public education, provide opportunity, foster public lives, and ameliorate social injustice.<sup>12</sup> The same applies to health care. While the exact economic outcome of including undocumented immigrants in the Affordable Care Act is difficult to determine and thus unknown, it is clear that the economic argument is not strong enough to trump a human right.

The second primary argument against inclusion of undocumented immigrants is that they have no right to healthcare as provided by the Affordable Care Act because they have no legal rights in this country. While it is true that undocumented immigrants have broken a law by entering the country illegally, violation of a law in the United States does not necessitate loss of one's human rights. Many people break many laws. Yet we still provide food, shelter, and most importantly healthcare to those incarcerated in our prisons. Morally, there is no grounds for denying the right to healthcare to undocumented immigrants based on their violation of the law.<sup>13</sup>

The question now becomes: can the U.S. fulfill its obligation to provide this basic human right to healthcare without including undocumented immigrants in the Affordable Care Act? Consider these figures: in 2007, the median household income for undocumented immigrants was \$36,000 (the same figure for legal residents was \$50,000).<sup>14</sup> A 2012 study in California found that the average cost of an appendectomy was \$33,000.<sup>15</sup> If an undocumented immigrant were to need this procedure and pay the entire cost out of pocket, that would leave them with just \$3,000 to cover the rest of their family expenses for the year. This is simply not realistic and does not meet the UN criteria that health services be economically accessible to all.

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<sup>12</sup> James Dwyer, "Illegal Immigrants, Health Care, and Social Responsibility," *Hastings Center Report* 34, no. 1 (January 2, 2004): 34–41, doi:10.2307/3528249.

<sup>13</sup> Ibid.

<sup>14</sup> Galarneau, "Still Missing."

<sup>15</sup> April 23, 2012, and 11:24 Pm, "Study: Appendix Surgery Costs Differ around U.S.," accessed April 5, 2015, <http://www.cbsnews.com/news/study-appendix-surgery-costs-differ-around-us/>.

In our current healthcare system, without access to insurance, undocumented immigrants essentially do not have access to medical care.

The error of many of the advocates for inclusion that I have cited above is confused immigration policy and healthcare policy. This same error was made by politicians as they wrote the Affordable Care Act and consciously excluded illegal immigrants. As Senator Max Baucus, chair of the Senate Finance Committee, remarked: “We’re not going to cover undocumented workers, because that’s too politically explosive.”<sup>16</sup> Immigration policy and health care policy are two fundamentally separate issues. The denial of a basic human right is not a tactic that a country that considers itself the leader of the free world ought to utilize in an attempt to control immigration. Many illegal immigrants fear deportation and thus do not seek health care. Our nation should send the message that although these people may have broken a law, they still are entitled to basic human rights.

The intent of the Affordable Care Act was to expand coverage to the uninsured so more in our nation have access to the safety of reliable, affordable care. However, “the provisions of the Affordable Care Act directly disadvantage undocumented immigrants relative to other people in similar economic circumstances.”<sup>17</sup> The United States should honor its long tradition, tracing back at least to Washington’s Farewell Address, of placing human rights in the forefront of its mission. In doing so, the U.S. must accept that human rights are equal rights, applicable to all humans or none at all, unalienable rights, and universal rights. Health care, recognized as a human right in numerous international agreements, must be provided to all persons living on U.S. soil, regardless of their legal status. In the current healthcare system, that leaves us with a

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<sup>16</sup> Galarneau, “Still Missing.”

<sup>17</sup> Stephen Zuckerman, Timothy A. Waidmann, and Emily Lawton, “Undocumented Immigrants, Left Out Of Health Reform, Likely To Continue To Grow As Share Of The Uninsured,” *Health Affairs* 30, no. 10 (October 1, 2011): 1997–2004, doi:10.1377/hlthaff.2011.0604.

moral imperative to include undocumented immigrants in the provisions provided by the Affordable Care Act.

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